



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Richard Doyle
City Attorney

SUBJECT: WORKERS' COMPENSATION LITIGATED CLAIMS **DATE:** May 23, 2008

BACKGROUND

At the May 12, 2008 Strategic Support Budget Study Session, Councilmember Madison Nguyen requested information on whether the number of workers' compensation litigated claims in San Jose was a low or high number relative to the size of the organization.

ANALYSIS

The Office contacted large California cities and selected counties for information on their workers' compensation program. The following chart provides information on the number of litigated claims, and whether legal services are provided by in-house lawyers or outside counsel.

| Agency | Open Litigated Claims | Employees | Claims/ Employees | In-house or Outside Counsel | # In-house Attorneys |
|---------------------------------|-----------------------|-----------|-------------------|--|-------------------------------------|
| County of Los Angeles | 16,000 | 105,000 | 15% | Both 5,600 In-house 10,400 Outside | 14 |
| City of San Jose | 997 | 6,953 | 14% | In-house | 4 |
| City of Los Angeles | 5,000 | 40,000 | 13% | Both 3,000 In-house 2,000 Outside* | 11 (4 more positions will be added) |
| City of San Diego | 1,078 | 11,000 | 10% | In-house | 4 |
| San Francisco (City and County) | 2,697 | 28,000 | 10% | In-house | 8 |
| City of Oakland | 320 | 4,414 | 7% | Outside Counsel | 0 |
| County of Santa Clara | 874 | 15,000 | 6% | In-house | 7 |
| City of Long Beach | 308 | 5,000 | 6% | In-house | 3 |

*Outside counsel handles all claims for sworn personnel and enterprise funded departments (Airport, Harbor, and Water & Power).

ANALYSIS (CONT'D)

During the course of our research, it was apparent that variations in the methodology used by each jurisdiction to account for litigated claims affected the data. For example, Long Beach reported 308 cases, with approximately 60 of the cases involving multiple claims. In comparison, San Jose accounts for each claim separately, even if it is related to the same employee, thus the total number of litigated claims using San Jose's methodology would be higher for Long Beach. In addition, the jurisdictions provided litigated claims data from available reports that did not consistently cover the same period of time.

Most of the jurisdictions have in-house lawyers provide workers' compensation legal services. Due to the high volume of claims, both the City and County of Los Angeles hire outside counsel to assist the in-house lawyers with managing the heavy workload. The Los Angeles City Council recently approved 4 additional attorney positions for their City Attorney's Office in an effort to reduce the number of cases sent to outside counsel.

San Jose's in-house legal cost per claim is lower than jurisdictions that hire outside counsel.

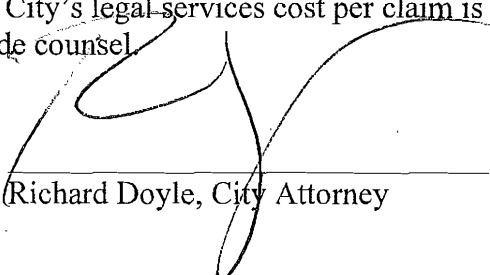
| Agency | Year | Cost | Claims | Cost per Claim |
|--|---------|-------------|--------|----------------|
| Riverside County | 2004-05 | \$1,700,000 | 557 | \$3,052 |
| City of Oakland | 2006-07 | \$815,482 | 320 | \$2,548 |
| Los Angeles Metropolitan Transit Authority | 2002-03 | \$3,100,000 | 1,400 | \$2,214 |
| City of Los Angeles | 2006-07 | \$2,000,000 | 2,000 | \$1,000 |
| City of San Jose | 2008-09 | \$805,073* | 997 | \$807 |

*Personal Services budget for 4 attorneys and 1 legal administrative assistant.

CONCLUSION

San Jose appears to have one of the highest percentages of litigated claims compared to other jurisdictions surveyed. However, as previously discussed, statistical variations may be attributed to differences in how each jurisdiction accounts for claims, and the period of time of the reported data.

The cities and counties are mainly using in-house lawyers due to the cost savings. The City Attorney's Office 2008-09 budget for in-house legal staff is \$805,073, whereas the estimated annual cost to hire outside counsel is \$1.48 million. The Office's attorneys also provide legal advice, facilitate training sessions, and handle subrogation matters, which has generated \$237,000 in plaintiff revenue this year. The City's legal services cost per claim is lower than the 4 other jurisdictions surveyed that hire outside counsel.



(Richard Doyle, City Attorney)